

83-501

No.

Supreme Court, U.S.

FILED

AUG 29 1983

MARGARET L. STEVENS,
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

GEORGE DEWEY HAYES,

Petitioner

versus

CITY OF BATON ROUGE,

Respondent

**PETITION FOR WRIT OF CERTIORARI
TO THE**

**CITY COURT OF THE CITY OF BATON ROUGE
(DIVISION 'B'),
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA,
IN CASE NUMBER: T#77959.**

Attorneys for Petitioner:

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QUESTIONS PRESENTED

Whether the intendment of Chapter VI, Title 11, Section 53(b) of Baton Rouge City Code (BRCC-11:53(b) proscribes the lane usage allegedly made by the petitioner, GEORGE DEWEY HAYES, as a motorist lawfully operating an automobile upon the Interstate Expressway (I-10 West) under the fact and circumstances of this case, as made and provided on the face of the record via of the 'Charging Affidavit'; and, if so, is BRCC-11:53(b) too unconstitutionally broad, or too vague and ambiguous, to properly inform motorists that such operation, usage or conduct is 'lane straddling' or 'cut-in' within the proscriptive bounds of BRCC-11:53(b), subjecting motorists, merging unto a continuing traffic lane from an entrance lane unto the Expressway, to criminal prosecution and punishment without fair and adequate statutory warning; and, therefore, denying Petitioner and other motorists due process of law and equal protection of the laws accorded and guaranteed to Petitioner, and others, in such case as made and provided, by the Fourteenth Amendment of the Constitution of the United States?

LIST OF PARTIES

The following are parties to these proceedings, to-wit:

GEORGE DEWEY HAYES, Petitioner

CITY OF BATON ROUGE, Respondent

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None.	

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

GEORGE DEWEY HAYES,

Petitioner

versus

CITY OF BATON ROUGE,

Respondent

**PETITION FOR WRIT OF CERTIORARI
TO THE**

**CITY COURT OF THE CITY OF BATON ROUGE
(DIVISION 'B'),**

**PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA,
IN CASE NUMBER: T#77959.**

The petitioner, GEORGE DEWEY HAYES, respectfully petitions for a writ of certiorari to review the conviction and sentence of Wednesday, September 22, 1982, entered against him by the City Court of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana.

OPINIONS BELOW

'Oral Reasons and Ruling of the Court' (as dictated into the record), by the City Court of the City of Baton Rouge, on Wednesday, September 22, 1982. [APPENDIX-A]

'Opinion/Judgment' of the Court of Appeal, the Nineteenth Judicial District Court (Criminal Section III), Parish

of East Baton Rouge, State of Louisiana, dated March 1, 1983. [APPENDIX-B]

'Opinion/Judgment' of the Nineteenth Judicial District Court (Criminal Section III), Parish of East Baton Rouge, State of Louisiana, which is the Appeal Court in this case, on Petitioner's 'Petition for Rehearing' on appeal in that Court, dated April 5, 1983. [APPENDIX-C]

'Opinion' of the Court of Appeal, First Circuit, State of Louisiana, dated May 5, 1983. [APPENDIX-D]

'Opinion' of the Supreme Court of the State of Louisiana, dated June 27, 1983. [APPENDIX-E]

'Minutes' of the Trial Court, the City Court of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, dated September 22, 1982. [APPENDIX-F]

JURISDICTION

This is an application for a writ of certiorari to review the judgment of the City Court of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, in a criminal case after an application for a writ of certiorari or review having been denied by the Supreme Court of Louisiana on June 27, 1983; that, therefore, timely filing of this 'Petition for Writ of Certiorari' with this Court is pursuant to 28 U.S.C. § 2101(d) and Rule 20.1 of the rules of this Court.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV, § 1, provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Louisiana State Constitution of 1974, Article I, § 2, provides:

No person shall be deprived of life, liberty, or property except by due process of law.

STATUTORY PROVISIONS INVOLVED

Baton Rouge City Code, Chapter VI - Use of Roadway Generally - Title 11, Section 53. Traffic lanes. [APPENDIX-G]

STATEMENT OF THE CASE

In a 'Uniform Traffic Ticket And Complaint Affidavit' [APPENDIX-H] the City of Baton Rouge charges that petitioner, GEORGE DEWEY HAYES, did on August 23, 1982, unlawfully operated an automobile on I-10 West, an International Expressway over College Drive of the City of Baton Rouge, Louisiana, in violation of Baton Rouge City Code, Chapter VI, Title 11, § 53(b), which provides:

Sec. 53. Traffic lanes.

* * *

(b) Where such traffic lanes have been marked, it shall be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement, (Ord. No. 2550, § 1, 9-23-70)

On September 22, 1982, the petitioner, GEORGE DEWEY

HAYES, was tried by the City Court of the City of Baton Rouge (Division 'B') and found GUILTY AS CHARGED and convicted/sentenced to pay a fine of \$15.00 or one (1) day in Jail and Court Costs of \$20.00 or one (1) day in Jail for allegedly operating an automobile in violation of BRCC-11:53(b) when at about 10:55 P.M. on August 23, 1982, he entered upon and merged into one of the main traffic lanes of I-10 West, which was practically traffic-free except for an oncoming car spotted by its headlights in the distance rear of Petitioner; and at which time Petitioner was making his merging entrance onto I-10 West at the minimum-posted speed limit. [Cf. APPENDIX-F and H]

The issues presented in this Court, the Supreme Court of the United States, were timely raised in the [C]ourts below via 'Oral Motion for a Directed Verdicted' [APPENDIX-F]; and by 'Petition for Rehearing' [APPENDIX-I] on appeal in the Nineteenth Judicial District Court (Criminal Section III), Parish of East Baton Rouge, State of Louisiana; and 'Petition for Writ of Certiorari' [APPENDIX-J] in the Louisiana Court of Appeal, First Circuit; and the 'Petition for Writ of Certiorari or Review' [APPENDIX-K] in the Supreme Court of Louisiana; and by 'Assignment of Errors and Designation of the Record' [APPENDIX-L] filed and/or submitted in the [C]ourts below, i.e., the state courts.

On July 5, 1983, Petitioner served 'Notice of Intention/Motion for Stay of Execution and Order,' suggesting to the City Court of the City of Baton Rouge that the conviction/sentence therein pending against the petitioner, GEORGE DEWEY HAYES, be stayed while this 'Petition for Writ of Certiorari' is pending in this Honorable Court, the Supreme Court of the United States. The Trial Court granted the relief therein sought; provided, however, that this 'Petition for Writ of Certiorari' is made hereto and timely filed herein on or before Friday, August 26, 1983. [APPENDIX-M]

ARGUMENT

It is well-settled in Louisiana, that "no act is made a crime unless it is defined and made a crime clearly and unmistakably by statute." *State v. Whittlock* (1939) 193 La. 1044, 192 So. 697, citing at page 192 So. 700[3] the following:

Unless an act can be brought within the meaning of the words of a criminal statute, it is not a crime, though it comes within the mischief sought to be remedied, and is of equal atrocity with the acts enumerated and denounced by the statute. *State v. Fontenot*, 112 La. 628, 36 So. 630, *State v. Brinson* (1921) 149 La. 320, 89 So. 18. [Cf. *Garner v. State of Louisiana*, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed. 2d 207; *Thornhill v. Alabama* (1940) 310 U.S. 88; *Cantwell v. Connecticut* (1940) 340 U.S. 296].

The act of conduct of the petitioner, GEORGE DEWEY HAYES, and of which he was arrested and currently stands charged, prosecuted and convicted/sentenced is in nowise a traffic violation of 'Improper Lane Usage' within the intentment of BRCC-11:53(b), except that BRCC-11:53(b) be construed in a manner to be constitutionally impermissible in application for vagueness and/or ambiguity; or for lack of the necessary statutory prerequisites to adequately serve due process warning upon motorists making lawful use of the Expressways.

SUMMARY OF THE ARGUMENT

The crime of which the petitioner, GEORGE DEWEY HAYES, is convicted/sentenced is not made a crime by the statute under which he is charged—BRCC-11:53(b). [APPENDIX-G]

The arrest, charge, prosecution, conviction and sentence of the petitioner, GEORGE DEWEY HAYES, by the City

Court of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, are in violation of rights and privileges accorded and guaranteed to Petitioner by the Fourteenth Amendment of the Constitution of the United States.

CONCLUSION

For the above and foregoing reasons, petitioner, GEORGE DEWEY HAYES, prays that this, his 'Petition for Writ of Certiorari,' be granted; and, in due course, the conviction/sentence of him by the City Court of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, be reversed, set aside, annulled, voided and vacated.

And for such other relief that the law and the nature of the case permit.

Respectfully submitted,

Attorneys for Petitioner:

JONES & JONES

JOHNNIE A. JONES, Trial Attorney
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

CERTIFICATE OF SERVICE

Undersigned counsel of record for the petitioner,
GEORGE DEWEY HAYES does hereby certify that three
(3) copies of the above and foregoing 'Petition for Writ of
Certiorari,' together wth the 'Appendices' thereto, are being
hand-delivered and served upon the offices of:

Honorable Freddie Pitcher, Jr.
Judge of Division 'B'
City Court of Baton Rouge
1100 Laurel Street
Post Office Box 1471
Baton Rouge, Louisiana 70821-1471
Telephone: 504/389-3025

Mr. Ralph Tyson, Esc.
City Prosecutor
City Courthouse Building, Room 208
1100 Laurel Street
Post Office Box 1471
Baton Rouge, Louisiana 70821-1471
Telephone: 504/389-5156 or 389-3020

Baton Rouge, Louisiana, this 25 day of August, 1983.

JOHNNIE A. JONES, Trial Attorney

1-A

APPENDIX "A"

CITY COURT
CITY OF BATON ROUGE
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CITY OF BATON ROUGE

VERSUS

GEORGE D. HAYES

NUMBER: T#77959

HEARD

WEDNESDAY, SEPTEMBER 22, 1982

HONORABLE L. J. HYMEL, JUDGE PRESIDING

APPEARANCES:

BURTON GUIDRY, ESQ. * FOR THE CITY
Assistant City Prosecutor

JOHNNIE A. JONES, ESQ. * FOR THE DEFENDANT
Attorney at Law

Transcribed by:
Betty C. Cruse, Minute Clerk
Baton Rouge City Court

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WEDNESDAY, SEPTEMBER 22, 1982

This matter was begun:

MR. GUILLORY: Yes, sir, Your Honor, we'd like to proceed with the trial at this time, Judge.

THE COURT: All right, let's take up Mr. Jones' trial first.

MR. JONES: That's right.

THE COURT: All right, call the case for the record.

MR. GUILLORY: Ticket number 77959, George Dewey Hayes. City at this time would like to call Officer Richard Lee to the stand.

MR. JONES: Ask for sequestration, Your Honor.

THE COURT: What's the charge in the case,

MR. GUILLORY: Improper lane useage. Title 11:53B.

THE COURT: All right, all witnesses in the case of City versus George Dewey Hayes, whether you be a City witness or a defense witness, step forward at this time. I assume this is the only witness. Raise your right hand, please.

TRANSCRIBER'S NOTE: At this time all prospective witnesses were duly sworn in by the Court.

THE COURT: Have a seat on the witness stand, Officer Lee.

OFFICER RICHARD LEE, CALLED AS A WITNESS ON BEHALF OF THE CITY OF BATON ROUGE, AFTER HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. GUIDRY:

Q State your name and occupation for the record, please.

A Officer Richard Lee, III, Baton Rouge City Police officer.

Q Officer, on or about August the 23rd, 1982, did you have an occasion to issue a citation to a Mr. George D. Hayes,

A I did.

Q And is Mr. Hayes -- is this Mr. Hayes, the gentleman present here in court today,

A Yes, sir.

Q And can you tell us the circumstances surrounding the issuance of that citation?

A Yes, sir. I was proceeding westbound on I-10 when I observed a vehicle, a Dodge four door, white in color, pull into my lane of traffic in which it caused me to decelerate very quickly and the vehicle behind me also to decelerate and nearly hit me in the rear. At that time I decided to pull the vehicle over and I issued Mr. Hayes a citation for Improper Lane Useage in which he did not signal when he was changing lanes.

Q So he -- he didn't make any signal?

A None at all. He made a quick turn into my lane of traffic.

Q Was there other traffic present?

A Yes, sir, it was.

Q And did you have to take any emergency evasive maneuvers in order to avoid an accident?

A No, the only movement -- only hazard was the vehicle behind me.

MR. GUIDRY: I have no further questions.

THE COURT: Mr. Jones?

MR. JONES: Yes.

CROSS-EXAMINATION

BY MR. JONES:

Q The only hazard you say was the vehicle behind you?

A Right, it almost rammed me in the rear.

Q I notice, Officer Lee, that you say that leading causes of an accident, was an accident shown on the ticket where you have marked there, an accident occurred.

A Just missed accident.

Q Beg your pardon?

A Just missed accident.

Q But you --

A Therefore it was almost an accident.

Q I see, but you have there leading cause in accident. But you now saying it was not an accident.

A Leading cause of accident . . . where is that?

Q On the ticket. You wrote it, did you not?

A I don't even see that, sir.

Q You don't see it.

A No.

Q You -- you see it, Your Honor?

THE COURT: The ticket itself is not evidence.

MR. JONES: Your Honor, but we come -- came to court prepared on what he's charged with and what the information --

THE COURT: If you want to introduce it, I'll take a look at it but what I'm saying is it's not evidence at this point in time and I'm not going to look at it unless some -- one side or the other moves to introduce it into evidence.

MR. JONES: Your Honor, at this time, in connection with the witness' testimony, I'd like to offer, introduce and file into evidence the traffic citation, the complaint, entitled Uniform Traffic Ticket and Complaint affidavit.

THE COURT: All right, you want to offer the original or your copy?

MR. JONES: Number 077959. I offer the original.

THE COURT: All right, let it be --

MR. GUIDRY: I have no objection, Your Honor, to the original.

THE COURT: All right, let it be filed into evidence.

MR. JONES: I ask that it be marked Defendant Number-1.

THE COURT: Okay, continue, Mr. Jones.

BY MR. JONES:

Q So it was no accident, is that right?

A No, sir.

Q And where did this occur on the expressway?

A I-10 just above College, the ramp.

- Q Beg pardon?
- A I-10 just above College Drive, the ramp.
- Q Was he entering, he coming -- he was entering upon --
- A No, he was not entering. He was proceeding on I-10.
- Q Had he come upon to I-10 --
- A No, he had not come on I-10.
- Q -- the expressway, onto the expressway? What ramp was it?
- A Oh, my correction. Yes, he did.
- Q Beg pardon?
- A He did.
- Q He did --
- A Uh-hum.
- Q -- is that right?
- A That's right, right.
- Q And as he entered the expressway, that lane he had to come into the northbound lane, is that right?
- A Uh-hum.
- Q Or the westbound.
- A Westbound.
- Q He wasn't meeting any vehicles on that -- on that expressway, was he?
- A No.
- Q The only vehicle that was coming was your vehicle which

8-A

was following -- which was coming up in that lane,
wasn't -- isn't that right?

A In the center lane.

Q Center lane.

A Right.

Q It was four or five lanes there, was it not, to your left?

A Four.

Q Four to your left?

A It was -- it was two to my left.

Q It was two to your left.

A Right.

Q Okay, the other --

A No, correction, it was one to my left because I was in
the center lane.

Q You were in the center lane.

A Right.

Q And so that was -- and as he -- there was one -- it was
two lanes to your right then.

A Right.

Q And he was entering.

A Right.

Q Then, Officer, if you were in the center lane and he was
entering the expressway and there was a lane between
you and him, how did you almost hit him in the back?

9-A

- A I didn't say me hit him in the back. I didn't say his vehicle, I said another vehicle. I said he cut across one lane into the center lane.
- Q My testi - your testimony, wasn't your testimony to the effect that the other vehicle almost hit you in the back because you had --
- A Because of him.
- Q Because --
- A Because the driver of that vehicle pulled in front of me, I had to decelerate my vehicle, causing the vehicle behind me to decelerate and nearly hitting me in the rear.
- Q Well, what vehicle pulled in front of you?
- A This vehicle.
- Q But you were in -- you say was a lane between you and him.
- A Right. He cut across two lanes coming on to the I-10 west -- I-10 interstate off the on-coming ramp.
- Q He came in on this lane, into the other lane and then there was a lane to your left --
- A You want me to draw a picture?
- Q -- a lane to your right and then he almost caused you to have an accident --
- A Yes, sir.
- Q -- even though you say that was an accident but there was no accident.
- A I didn't say there was an accident. I said the cars -- if you read the citation "caused person to dodge", and I

said just missed accident. Is that what you're referring to?

Q You say -- you say "leading cause of accident," leading cause of accident, improper lane useage." That's what I read it to say. And there was no accident.

A No, sir.

Q There was no accident and it was two lanes, a lane of traffic to your right, a lane of traffic to your left between -- between you and Mr. Hayes' vehicle was a lane of traffic between you-all. And to your left there was another complete lane that nobody was in?

A Uh-hum, there was other traffic present. I couldn't say that there was traffic in that lane or not.

Q You don't know?

A I don't know.

Q And then the vehicle behind you almost hit you?

A Right. I saw him in my rearview mirror.

Q And you were -- and still the lane of traffic between you and Mr. Hayes and then the vehicle almost hit you because you-all both were traveling in the middle lane and Mr. Hayes was entering up on the expressway.

A Okay, let me explain something to you. I was in the middle lane, Mr. Hayes was coming on the on-ramp, he cut diagonally across the Interstate from the lane he was in to another lane and to my lane of traffic, in a diagonal way of travel. Therefore I had to decelerate in order to let him in front of me or cause an accident.

Q Could you not -- could you -- even if that had happened,

11-A

even if that had happened, you still had another lane, you could pull to your left.

A Correct, but I didn't know if any vehicle was in that lane. I was in --

Q Well, didn't you have a rearview mirror? Didn't you have a sideview mirror?

A I was looking -- I didn't look in my sideview mirror. I looked in the rearview mirror.

Q Well, you failed to do what you was supposed to have done.

A No, I did what I was supposed to do.

Q Well, what was that? -- Make a necessary --

A Deceleration.

Q Is that what you call doing what you supposed to do? Making an unwarranted arrest?

A A deceleration --

MR. GUIDRY: Objection, Your Honor. I'm going to make an objection on --

THE COURT: I'll sustain the objection. Arguing with the witness, Mr. Jones.

BY MR. JONES:

Q Didn't you --

THE COURT: I want to give you full latitude on cross-examination but let's try not to argue with the witness.

BY MR. JONES:

Q Didn't you also -- you have two people signing this ticket, is that right? Both of you signed this ticket?

- A Yes, my partner, Officer Milligan is in a school at this time.
- Q Both of you wrote this ticket, is that right?
- A He witnessed.
- Q Where he say he witnessed it on here?
- A Where it's stating, it shows that.
- Q Beg pardon?
- A Where he signed his name.
- Q And where is he signed as a witness?
- A Where he signed his name.
- Q Yeah.
- A I say he's witness.
- Q But where he signed on here as a witness?
- A I say he's a witness and he's not here because he's in school.
- Q I'm not -- I'm not saying, I say where on this ticket appears that he is a witness. Both of you --
- A As I state again --
- Q -- wrote this ticket.
- A -- I said he was a witness.
- Q Both of you wrote this ticket.
- A As I -- no. As I state he's a witness.
- Q This entire ticket is in your handwriting?
- A Yes, sir, except for his signature.

Q The fact is you don't know why you give him this ticket, do you, Officer?

A I just explained to you, sir.

Q Why? Explain that again because I can't put it together.

MR. GUIDRY: Your Honor, I'm going to object. He's already testified to the fact of this matter why he --

MR. JONES: Your Honor, I can't put it together. I want to be -- I want to understand why -- how you managed to give him a ticket and what is the violation.

THE COURT: I'll overrule the objection but let's try not to be repetitive, Mr. Jones.

MR. JONES: Thank you, Your Honor.

A As I state again I was coming westbound I-10 Interstate coming up the -- over the ramp of College Drive and the white Dodge driven by the defendant came off the access lane to the Interstate, cut across the lane next to me into my lane of traffic which I had to decelerate and then looked in my rearview mirror, the vehicle behind me nearly hit me in the rear. Therefore I issued the defendant a citation for improper lane useage.

BY MR. JONES:

Q Did you ever once thought that the vehicle that almost hit you in the rear could have been traveling too close? Failing to observe your vehicle, the movement of your vehicle?

A He possibly could but I can only stop one violator at a time, therefore I stopped the first which was the defendant.

Q But the one that almost caused the accident was the one

who was traveling behind you and almost hit you in the rear.

A No, sir, the one who caused me to decelerate.

Q I notice you marked on -- did you look at his driver's license?

A Sir?

Q Mr. Hayes' driver's license?

A Yes, sir.

Q Did you see race -- any race designation on his driver's license?

A No, sir.

Q Beg pardon?

A No, sir.

Q You did?

A No, sir.

Q Huh?

A No, sir.

THE COURT: He said, "no, sir."

BY MR. JONES:

Q Oh, no, sir. I see. Well, how did you manage to put race designation on this ticket? If you don't see it on his -- on his driver's license?

A Well --

Q How were you able to identify? Did you know whether he was Japanese?

A I just wrote B down there.

Q Spanish?

A I just wrote B.

Q African?

MR. GUIDRY: Your Honor, I'm going to object. This whole line of questioning is --

MR. JONES: I'm -- that's a proper question --

MR. GUIDRY: -- completely irrelevant --

MR. JONES: -- Your Honor, because he -- he has --

THE COURT: I sustain the objection. It doesn't matter whether or not the man is white, black, yellow or red or whatever. It's whether or not he's innocent or guilty on this improper lane useage. I'm going to sustain the City's objection.

BY MR. JONES:

Q What time of night was it, Officer?

A 10:55 P.M.

Q Beg pardon?

A 10:55 P.M.

Q So you could -- you could see lights on the car behind you, could you not?

A (UNINTELLIGIBLE).

Q And yet you say you didn't know whether a car was coming up on your left or not.

A That's right.

Q Did you have a side view mirror on your vehicle?

A I did.

Q Beg pardon?

A I did.

Q But you didn't use it?

A I was in -- looking through my rearview mirror which is inside the vehicle.

Q And your rearview mirror wouldn't have shown you a car coming up on your left?

A No, sir.

Q Beg pardon?

A No, sir.

Q With lights on, it wouldn't have shown.

A Not the way I have it stationary.

Q Beg pardon?

A I have it situated so I can see all traffic coming on the right side of me.

Q And you don't have anything to see what's coming up on the left.

A Rearview mirror on the left and driver's door.

Q Don't you have a right -- right side view mirror?

A No, sir. It's only equipped with one mirror.

Q You don't have a right -- beg pardon?

A It's only equipped with one mirror on the door -- on the right driver's door.

17-A

Q You mean to tell me that the police officers' vehicles are only equipped with one mirror --

A The 1981 Ford Fairmont --

Q -- (INAUDIBLE) ?

A The 1981 Ford Fairmont's are equipped with one. The new ones coming out are equipped with two.

Q And you -- and they put that type vehicle on multiple lane expressway where the police officer --

MR. GUIDRY: Your Honor, I'm going to object again. This is --

MR. JONES: Your Honor, that's --

THE COURT: I'll sustain the objection.

MR. GUIDRY: It's irrelevant to the . . .

BY MR. JONES:

Q So it wasn't no accident?

A No, sir.

Q Now, you have -- you charge with 11:53B. Is that right?

A Yes, sir.

Q What's that -- what's that, Officer?

A (NO AUDIBLE RESPONSE).

Q 11:53B, what's that?

A Improper lane useage.

Q Beg pardon?

A Improper lane useage.

18-A

Q Explain to me how 53B covers that?

MR. GUIDRY: I object --

BY MR. JONES:

Q This violation?

MR. GUIDRY: I object. Your Honor.

THE COURT: I sustain your objection.

MR. GUIDRY: He's asking for a legal opinion.

THE COURT: That's my -- I think that's my function.

BY MR. JONES:

Q Would you tell the Court how -- how the defendant here George Hayes violated 53B?

MR. GUIDRY: I object. Your Honor, he's testified three times already --

THE COURT: I sustain the objection.

MR. GUIDRY: -- (INAUDIBLE/UNINTELLIGIBLE).

BY MR. JONES:

Q Could he . . . could he continue on the on exit without crossing into the left -- into the left lane in order to continue north? Continue west?

A What left lane you talking about?

Q The lane when he entered --

A They got three lanes to his left.

Q When he entered the expressway, didn't he have to --

- didn't he have to cross that lane in order to continue west?
- A Which lane are you talking about? My lane or the lane to the left -- to the right of me?
- Q No, I'm talking about the lane to his immediate left. The one between you, it was the one -- it was a lane between you and him.
- A Right.
- Q He had to cross that lane in order, didn't he? When he enter the expressway, you have to enter into that --
- A That's correct, he could have stayed in the lane.
- Q He could have stayed in that lane.
- A Uh-hum, right.
- Q You could have switched over to your left also, too, couldn't y'all?
- A No, I had complete control of the lane I was in therefore he should have either signaled to get --
- Q What you saying is the entire expressway was belonging to you.
- MR. GUIDRY: Objection, Your Honor.
- BY MR. JONES:
- Q That's what you're saying.
- MR. GUIDRY: I object.
- THE COURT: I sustain the objection. You're arguing with the witness.

BY MR. JONES:

- Q At the time that you stopped him, where did you stop him on the expressway?
- A . . . I do not recall the exact place but I know it was on the Interstate on the shoulder.
- Q You actually stopped him and left him in the middle of the highway, didn't you?
- A No, sir, I shall state again, it was on the shoulder.
- Q Did you leave him straddle a lane?
- A I did not. No, I did not. He pulled over on the shoulder.
- Q You put him on the shoulder of the road. Now, when he came off the shoulder of the road to get back into the -- into one of the proper lane to bring him west, he would had to straddle, wouldn't he? Wouldn't he have had to cross the line to get back off the shoulder of the road?

MR. GUIDRY: Your Honor, I'm going to object.

MR. JONES: Well, Your Honor --

MR. GUIDRY: That's irrelevant. It's after the fact.

MR. JONES: Your Honor, the question is he's charged with straddling. How can he move from one lane to another to go where he going without crossing the lane -- the line?

THE COURT: All right, one at a time.

MR. GUIDRY: His question was relating to events occurring after the ticket was issued. If he's asking him before then I withdraw the --

THE COURT: I sustain the objection. That's the way I appreciate the question also.

BY MR. JONES:

Q Okay, Officer, well, at the time that you stopped him --

A Uh-hum.

Q -- to pull him over to the shoulder of the road --

A Uh-hum.

Q -- he also had to cross over a line to get to the shoulder of the road, didn't he?

A That's correct.

Q Beg pardon?

A That's --

Q He straddled at that time, too, didn't he?

A I reckon.

Q Beg pardon?

A I reckon so.

Q So you forced him -- you forced him to violate the law.

A No, sir, I only displayed --

MR. GUIDRY: I object, Your Honor, that's --

BY MR. JONES:

Q You forced him to violate the law if --

THE COURT: I sustain the objection.

MR. JONES: Your Honor, he caused him to --

THE COURT: Mr. Jones, I don't know, do you have a copy of the ordinance in front of you?

MR. JONES: Yes, sir, yes, sir.

THE COURT: It says it's okay to cross traffic lanes when you are lawfully passing another vehicle or preparatory to making a lawful turning movement. So I assume that -- I assume that he was stopped in a lawful manner or the manner in which he stopped and pulled over was done lawfully. So the word lawfully passing and lawfully turning, I think those are the words that you're looking at. I'm going to sustain the objection. Let's proceed. Let's move on.

MR. JONES: Your Honor, the Statute say making a lawfully turning movement.

MR. GUIDRY: Your Honor, I'm going to object to Mr. --

MR. JONES: When that -- that Statute within my -- within my thinking, Your Honor, to mean that when you're going to execute a left hand turn, not try to -- going -- changing lanes. Or making a right hand turn, a lawful turning movement. Not when you -- not when you traveling and going from one lane, it's the word turning, it's different from --

THE COURT: Well --

MR. GUIDRY: Your Honor --

MR. JONES: -- does not carry the same connotation.

MR. GUIDRY: If I may, Judge, suppose Mr. Jones has now submitted his case or has finished questioning the witness, he's making his argument now --

MR. JONES: No, no, no.

THE COURT: I've sustained the objection. Let's move on. Continue with your cross-examination, Mr. Jones.

BY MR. JONES:

Q Wasn't no -- wasn't no . . . no driveway he was turning into, was he -- was Mr. Hayes turning into a driveway?

23-A

A Not on the Interstate, no --

Q Beg pardon?

A Not on the Interstate.

Q Okay, was he turning into a street?

A Sir?

Q Beg pardon? Was he turning into a street?

A There is no street on the Interstate.

Q Was he turning into a bridge?

A What are you referring to?

Q Beg pardon?

A What are you referring to?

Q I mean was he turning into it, was he turning into a bridge? You know what turning mean? You charge him with turning.

A I can't answer that --

MR. GUIDRY: Objection, Your Honor, he's charged with improper lane useage.

MR. JONES: He's charged under -- he's charged under 11:53B.

THE COURT: Just ask your questions. Let's -- let's move on. Move on.

BY MR. JONES:

Q Officer, was he turning upside down?

A No.

24-A

Q I'm asking you was he turning upside down?

A No, not that I know of.

Q Well, what turning was he doing?

A If you read the ticket, it says cutting in and lane straddling, right there.

Q Where? 53B say turning.

MR. JONES: I tender the witness.

THE COURT: Any redirect?

MR. GUIDRY: Just two questions.

REDIRECT EXAMINATION

BY MR. GUIDRY:

Q Officer, where was this ticket issued? Do you recall?

A Where it was issued?

Q Yes, where was the violation at? Where did it occur?

A It was just west of -- where it occurred, it occurred on top of the -- the ramp over College Drive, I-10 west-bound.

Q And is that in the city of Baton Rouge?

A It is in the city.

MR. GUIDRY: I have no other further questions.

THE COURT: You can step down, Officer Lee.

OFFICER LEE: Thank you.

WITNESS EXCUSED

* * * *

THE COURT: City?

MR. GUIDRY: We have no further evidence to submit,
Your Honor.

MR. JONES: Move for a directed --

THE COURT: Defense?

MR. JONES: Move for a Directed Verdict, Your Honor.

THE COURT: On what grounds?

MR. JONES: On the ground that the Statute under which he -- he's charged is improper and that there was no violation, no accident occurred, the ticket say that he was charged with an accident --

THE COURT: I don't see that where it says that. It says -- the plaintiff says just missed an accident. That's checked. I don't know what you're getting at there. But anyway, go ahead. Continue with your argument on it.

MR. JONES: (INAUDIBLE) . . . just missed . . . where it say just missed . . . Your Honor, the ticket has several places up top where it say leading cause of accident (UNINTELLIGIBLE) in that section of the ticket. It says

THE COURT: Yes, and cut in and improper lane useage.

MR. JONES: Cut in, improper lane useage.

THE COURT: Uh-hum.

MR. JONES: Those is causes of accident.

THE COURT: All right, okay, I see what you're getting at.

MR. JONES: And no accident occurred.

THE COURT: All right.

MR. JONES: And on that ground we move for a directed verdict.

THE COURT: Mr. Guidry, you want to respond?

MR. GUIDRY: Well, Your Honor, this is a uniform traffic ticket and complaint affidavit. At no time did the officer swear that there was an accident, only that the indication on the ticket is that these are indeed leading causes of accidents and just a mere reference to what the defendant may have done at the time as part of the affidavit. If we had not had these particular items set out in this manner, the officers would have to execute pages of affidavits just on traffic tickets. I think this is just a mere matter of convenience and he was, if you'll note that on the arrow, there was a violation of section 11:53B which is the local ordinance in this case and I think that the officer has indeed proven that matter. One other thing, Your Honor, the bottom of the ticket indicating conditions that increase the seriousness of the violation, the officer had marked the item which is designated just missed an accident and at no place does it say -- have anything checked as to the type of accident that could have occurred.

THE COURT: All right, I'm not concerned about that argument. What concerns me in the case is whether or not identification has been made during the testimony of Officer Lee. I don't recall that Officer Lee did -- the law requires of course that I guess it probably sounds kind of ridiculous to the lay people in the courtroom but one of the essential elements of every offense, whether it be a criminal charge or a traffic charge is that the City, the prosecuting authority, must identify the -- the defendant as the person who did what the witness says he did. I don't recall Officer Lee testifying. I'll be glad to listen to some argument on it but I don't recall him identifying this gentleman seated at this table as

the person that he stopped and issued the ticket to, Officer Lee?

MR. JONES: He did not -- he did not testify to that.

THE COURT: Did he?

MR. GUIDRY: Judge, I asked him if that indeed was the gentleman that he pulled over.

THE COURT: All right, I'll check the -- I'll listen to the tape later. I'm going to deny the Motion for Directed Verdict. I'll listen to the tape later. If it comes out that he didn't, I will grant the directed verdict at the end of the trial but the Motion for Directed Verdict based on the grounds submitted by Mr. Jones, the Motion for Directed Verdict is overruled and denied.

MR. JONES: Your Honor, I take an exception to the Court's ruling.

THE COURT: All right, let your exception be noted and your assignment of error reserved. Mr. Jones, anything from the defense?

MR. JONES: Okay, take the stand.

GEORGE D. HAYES, THE DEFENDANT, CALLED AS A WITNESS IN HIS OWN BEHALF, AFTER HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. JONES:

Q State your name, please?

A George Dewey Hayes.

28-A

Q Mr. Hayes, where do you live?

A 8055 Rosewood.

Q Mr. Hayes, on August 23, 1982, about . . . I don't see . . .

THE COURT: 10:55 P.M.

BY MR. JONES:

Q . . . about 10:55 P.M., did an accident occur on the expressway? Did you have an accident?

A No.

Q Beg pardon?

A No, sir.

Q Did you do a left hand turn or turn into another street or something on . . .

A No, sir.

Q . . . at that night, expressway?

A No, sir.

Q Did you do a right hand turn?

A No.

Q Did you turn over?

A No, sir.

Q Tell the Court what happened?

A . . . Two officers was in a car behind me, way behind, and about a minimum forty-five zone, pulled me over, and said "I'm going to give you a ticket." They wrote -- one wrote the ticket. They got the other one to sign it

-- they got me to sign, then they took the ticket, went to the back of the car and I went back to try to find out to see what they was doing to the ticket, they opened several books out there, and they read in different books. Then they went to the back of the car, two of them, this gentleman here and the other one, and they wrote something else on the ticket. And I walked back there. They told me to go stand back in front of the lights . . . while they do something to the ticket. What, I don't know, but after signing the ticket they took it to the back of the car and wrote something else out of a book on it. Then the other officer who was left brought the ticket fold and gave it to me. The two of them got in their car and left me there out on the highway. That's about the extent unless . . .

Q Left you on the highway?

A Left me there, yeah.

Q What you mean?

A Pulled me over with the lights, they protected — what I thought was protection for me to stop. Well, they pulled the protection off and left me unprotected and I didn't get back into the highway. I was left out there. So they just pulled off and left me.

Q And so you -- when you -- you had to get back into the highway?

A I had to get back without any -- well, lights or anything, had to get back in on my own.

Q And you had to pull -- you had to cross lanes to get back into the highway?

A Well, yeah, you have to cross (INAUDIBLE).

Q Had to straddle to get back into the highway.

A Right, right.

Q You had to cut lanes, cut in to get across the highway.

A Yeah, you had to cut back in. But they was gone. They didn't wait to see how I got back in.

Q Did you have any trouble getting your car started?

A Well, it started, yeah, it started.

Q But what if it hadn't started?

A I'd just (INAUDIBLE).

Q Beg pardon?

A I'd of been out there. Til I could get some help.

Q Cars do not always start after they stop, do they?

A No, I just started somebody on my way to court.

Q Now, you were -- when you came in on the expressway, you were entering in from -- you came up on entrance lane to the expressway?

A Oh, I heard testimony that I came up on entrance lane. That never was the case. Never entered -- I never entered up on that intersection.

Q What happened?

A I was coming from the Lady of the Lake which mean it wouldn't make me come out of there. I noticed that testimony. I don't know how he got me coming up on that lane. See, I came -- I was coming from Lady of Lake, not out of (UNINTELLIGIBLE). Never. I was Lady -- taking somebody to the Lady of Lake and was on my way back. So I was never pulling in from that lane.

Q And you never had the -- and you were continuing in that same --

A Continue -- if any pulling over -- see, I had no idea what these lights was in the back of me for. I just did not know. I was stopped, I was complete -- I was coming from Lady of Lake, okay, so you can pick up the Lady of the Lake, as to me coming out of Valley Park, no, no. I don't know. I saw some lights flashing and when they stayed back there long time so I figured it must of me -- must of been my vehicle they after. And I stopped. But there was no traffic or anything. I didn't know any -- any reason for being stopped whatsoever.

Q Was there any traffic --

A I didn't see any traffic.

Q -- other than you and the . . .

A That light behind me that they had on in my back.

Q That's the only traffic.

A That's the only light I saw.

Q And they -- they caused -- they wrote on this ticket after you had signed it?

A After I had signed it, they took it to the back, he took it to the back and the other gentleman took it back there, he -- I signed it, he had the other gentleman to sign it too. Well, when I signed it, I thought they was going to give it to me but they took it and went to the back of the car. And when I went back there, they made me leave and say, "you go get in front of that light." Well, he was not the one, the other gentleman say "go get in front of the light," but both of them stood back there in the back

of the car working on the ticket and they had several books they was reading and I think they had one of these books back there with them.

MR. JONES: I tender the witness.

CROSS-EXAMINATION

BY MR. GUIDRY:

- Q Mr. Hayes, you are indeed the George D. Hayes that was issued this violation, are you not?
- A My name is George Dewey Hayes.
- Q And you were issued this violation on August the 23rd --
- A I was issued a violation about that time.
- Q Isn't it true that you -- you did change lanes without making any signal indications?
- A That is -- actually it is not that you can keep conscious of every move made on the highway but I don't --
- Q I understand that --
- A -- I don't --
- Q Mr. Hayes, if I may --
- A Yeah, go ahead.
- Q -- this is the way we have to work, and I ask the questions and you answer it. It's a yes or no question --
- A Well --
- Q -- did you -- did you make a turn indication when you crossed lanes?
- A I don't know -- I don't recall any -- see, I don't recall

a lot of this. I'm trying to do the best I could with you but a lot of this I don't recall.

Q Well, just say you don't recall.

A I don't recall all this.

Q And you aware of the fact that a police vehicle was behind you, were you not?

A I -- when -- when they turn they lights on back there, way behind me.

Q You testified that they were way behind you. How far behind were they?

A It was a good ways.

Q What do you mean by a good ways?

A I don't know -- I don't know exactly.

Q A hundred yards?

A I don't know.

Q Fifty yards?

A I don't know but they was a good ways behind me.

Q Were you driving looking ahead or were you looking --

A I -- I was looking ahead, watching ahead, but until the light -- they had about three lights, look like they had one broke out in the middle, a real bright light back --

Q So you can't testify for certain how far the police vehicle was behind you.

A It was good ways. For certain, I don't think no one can say for certain but they was a good distance behind.

Q And there were other vehicles on the --

A I don't -- I don't remember seeing another vehicle. The only one I remember --

Q You don't remember, is that correct?

A Don't remember but one, that's the one. That's the only vehicle was behind me. None in front.

Q So you cannot testify with certainty that you did not cross lanes without making a --

A Without making a what?

Q Without making a turn indicator, is that correct?

A Oh, if I cross two lane I use a turn indicator.

Q You can't -- you just testified --

A Yes, I'll testify. I turn -- if I turn -- now listen. Here's what -- if I made a turn, I used the indicator but the problem is I go back to try to recollect everything unexpected is kind of hard.

BY THE COURT:

Q You didn't try to go back and remember after you were stopped and the policeman told you that they were going to write you up, you didn't try to go back and remember at that time what --

A I tried hard as I could to find out why I was issued a ticket. I couldn't never figure out any reason in the world. I just don't know any reason. It was -- now, coming from the Lady of the Lake, I studied, I tried to figure out that there's a lane that runs out, there's a sign that says this lane takes you to Valley Park. Okay, you got -- you must move over. And the ticket --

BY MR. GUIDRY:

Q Mr. Hayes, not to interrupt you, let me just ask you one question. When the officer pulled you over and began to write the citation, did you tell him that you had not done--

A I didn't tell them anything. I said nothing to the officers writing the citation.

Q You didn't say that, "Officer, I did not do that."

A He didn't ask me anything. He said, "I'm going to write you a ticket," and I felt that was his . . .

Q Did you -- but you didn't ask him what for?

A Didn't ask him a word.

Q You didn't tell him that you didn't do anything wrong.

A Not a word did I say.

Q In other words you didn't deny doing the thing at all.

A Now, I don't know about this denying business. You said that. I told you I didn't tell him anything.

Q All right.

A I didn't tell the officer one word.

MR. GUIDRY: No further questions.

THE WITNESS: Okay.

THE COURT: Redirect, Mr. Jones?

MR. JONES: No, sir.

THE COURT: You can step down, Mr. Hayes. Have a seat back by your attorney Mr. Jones.

WITNESS EXCUSED

* * * *

THE COURT: Anything further from the defense?

MR. JONES: No, sir, Your Honor.

THE COURT: Let the record show defense has rested.
Any rebuttal evidence from the City?

MR. GUIDRY: We have no further evidence, Your
Honor.

THE COURT: You ready to submit it, Mr. Guidry, or
you want to argue?

MR. GUIDRY: I'll submit it.

THE COURT: All right, submit it. You want to say
anything, Mr. Jones, in closing?

MR. JONES: We submit it, Your Honor.

THE COURT: All right. Okay, there's no way to reconcile the testimony of Officer Lee and that of Mr. Hayes. It's whether or not the Court's going to go with the story related by Officer Lee or whether the Court's going to go with the statement related by Mr. Hayes. It's felt that the officer's recollection of the events that lead up to the issuance of the ticket are clearer and more concrete than those of Mr. Hayes. The Court's going to go with the officer's statement on it. I'm going to find Mr. Hayes guilty of the offense of Improper Lane Useage in violation of Section 53B of the Baton Rouge Traffic Code. It's the sentence of the Court that Mr. Hayes pay a fine of Fifteen Dollars --

MR. JONES: Your Honor, we want to appeal -- we want to appeal --

THE COURT: -- in default one day; plus costs, in default one additional day. Yes, sir, Mr. Jones.

MR. JONES: At this time we move for an appeal.

THE COURT: All right, I'll defer payment of the fines until the return date on the appeal. I'm going to set the return date in sixty days; the filing of assignments of errors within fifty-five days. Failure to perfect your appeal within the sixty days will necessitate the payment of the fines on that sixtieth day. If you will, of course, your oral motion is enough but I'll ask you to please supplement the record with a written motion for an appeal. And as I said the return dates will be marked on this green sheet and the date for the assignments of errors also are marked on the green sheet. If your client will please step forward and sign the notice, it will either go up to the 19th JDC on appeal by the sixtieth day or your client will be in court to pay his fines at that time. Attached to and make a part of the record, the citation.

*** END OF THIS MATTER ***

APPENDIX B

CITY OF BATON ROUGE

VERSUS

GEORGE D. HAYES

NO. 11-82-470, CRIMINAL SEC. III
19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

JUDGMENT

This matter is before the Court from a Judgment from the Baton Rouge City Court.

Appellant has filed four (4) Assignments of Error and has submitted a brief in support of his contentions. The Court, after considering the brief and reviewing the record will exercise its option to decide the case on submitted briefs rather than set the matter for oral argument pursuant to Rule 12 of the Rules of the Nineteenth Judicial District Court. Appellant in his Assignments of Error contends (1) that the affidavit charging the defendant failed to charge a crime as defined in the Baton Rouge City Code, (2) that Baton Rouge City Code, Chapter VI, Title II, Subsection 53(b) is unconstitutionally vague, (3) that the Trial Judge erred in refusing to grant a directed verdict and (4) that the law and the evidence were insufficient to support a conviction.

The standard of review as to Assignments of Error (3) and (4) is whether or not any rational trier of fact could find that the evidence, considered in the light most favorable to the prosecution, could support a finding of proof of the essential elements of an offense beyond a reasonable doubt.

The Court has examined the record and finds that the Trial Judge, considering the evidence in the light most favorable to the prosecution, did not abuse his discretion in finding facts which would support the guilt of the defendant. Further, the Court finds that the Trial Judge did not abuse his discretion in denying the Motion for a Directed Verdict.

As to Assignments of Error (1) and (2), appellant did not assert his claims before or during the trial that the affidavit charging defendant failed to charge a crime as defined in the Baton Rouge City Code. Appellant also failed to assert in the trial court that the City Ordinance alleged to have been violated was unconstitutionally vague. As these issues were not raised by appellant at trial, they may not now be properly considered on appeal. *State vs. Harris*, 414 So.2d 325, *State vs. Johnson*, 389 So.2d 372, and Louisiana Code of Criminal Procedure Articles 841 and 920.

For the above stated reasons, the Judgment of the City Court is affirmed. IT IS ORDERED That a certified copy of the Judgment and the minute entry to be made indicating this Judgment shall be sent to the Judge and Clerk of the City Court within fifteen (15) days from the date of rendition and the Baton Rouge City Court is ordered to make the sentence in this matter executory.

Done this 1 day of March, 1983.

/s/DOUG MOREAU
JUDGE, NINETEENTH JUDICIAL DISTRICT
COURT

1-C

APPENDIX C

**NINETEENTH JUDICIAL DISTRICT COURT
OF LOUISIANA**

NUMBER 11-82-470

**CITY OF BATON ROUGE
VERSUS
GEORGE D. HAYES**

**IN RE: GEORGE D. HAYES, APPLICATION FOR
REHEARING**

APRIL 5, 1988

DENIED

/s/DOUG MOREAU
JUDGE, 19TH JUDICIAL DISTRICT COURT
CRIMINAL SECTION III

1-D

APPENDIX D

**STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT**

CITY OF BATON ROUGE

NO. 83 KW 0479

VERSUS

GEORGE DEWEY HAYES

MAY 5, 1983

In re: George Dewey Hayes, applying for writ of certiorari,
City Court of Baton Rouge, Parish of East Baton
Rouge, No. T#77959.

May 5, 1983

WRIT DENIED.

LFC

BJC

MAY 5, 1983

COURT OF APPEAL, FIRST CIRCUIT

/s/EDWARD C. SEGHERS
CLERK OF COURT
FOR THE COURT

APPENDIX E

**THE SUPREME COURT
OF THE STATE OF LOUISIANA**

CITY OF BATON ROUGE

83-KK-1184

VERSUS

GEORGE DEWEY HAYES

In Re: George Dewey Hayes applying for Writ of Certiorari or Review to the City Court of Baton Rouge, No. T#77959; First Circuit Court of Appeal, No. 83-KW-0479.

June 27, 1983

Denied.

JAD
PFC
WFM
JLD
FAB
JCW
HTL

Supreme Court of Louisiana
June 27, 1983

/s/DAN B. HAGGERTY, JR.
Dy. Clerk of Court
For the Court

Attorney Jeanie A. Jones

Defendant Arraigned on 9-22-82

and entered plea of N

before Oral no. for directed verdict denied

Defendant Advised of Right to Counsel

Defendant Intelligently Waived Right to Counsel

Trial Date

Appealed to 19th JDC - returnable
12-6-82 - written reasons to be filed
by 12-29-82 - M Mot. of

Trial Verdict G

The Court therefore enters the following order:

Fined \$ 15 or 1 days in jail

Costs \$ 20 or 1 days in jail

Jailed _____ days CFTS _____

Unsuprv. Probation Suprv. Probation

Presentence Inv. Sentencing Date _____

(DWI) (N/SI) School Rec. Keep License

S/D 12-6-82 S/D _____

S/D 4-11-83 S/D _____

Warrant _____ issued by def. counsel

Warrant _____ recalled FTA _____

Warrant _____ issued _____

Warrant _____ recalled _____ FTA _____

Warrant _____ issued _____

Warrant _____ recalled FTA

B/C 10-28-82 - Action of Errors filed.
S/D 3-1-83 the 19th JDC affirmed

S/D City Ct. sent conviction. 4D 4-11-83

notices mailed to def & counsel.

4H/B/C 3-24-83 - def. counsel made application

for rehearing to 19th JDC on appeal.

Paid \$ no action as of the dt. in Violations Bureau

LGH/B/C 4-4-83: application for rehearing on appeal filed

on 5-9-83 by def. co at 19th JDC

To Police Department: Issue Date: 8-23-82
 STATE OF LOUISIANA
 CITY OF BATON ROUGE Ticket No. 77959
 Vs. Viol. No. S3B

Hanes, George

The case against the above named accused, charged with the offense shown on the ticket and complaint, or arrest case bearing the above number, has been disposed of this date.

- On Plea of Guilty in Open Court
- On Plea of Nollo Contendre
- On Plea of Not Guilty
- On Trial Found Guilty
- On Trial Found Not Guilty
- Changed Plea to Guilty

DISPOSITION:

- Fine \$ 15 or Jail 1 Days.
- Fine Suspended.
- Jail Days. Susp. Str.Tm. WkE.
- Probation Suprv. Unsuprv.
- Presentence Investigation.
- NTSI School DWI School.
- Recommended Keep Driver's License.
- Case Dismissed on Motion of .
- Appealed to Court.
- Transferred to 19th Judicial District Court.
- No Billed.

COURT COSTS:

- Regular \$ 20 ~ 1 Days. Susp.
- FTA \$ or Days. Susp.
- City Ct. Fund \$ or Days. Susp.
- Other \$ or Days. Susp.

S/D 12-6-82 \$

S/D \$

THIS 22 day of 9, 1982

5 jl Munute Clerk

APPENDIX G**CHAPTER VI—USE OF ROADWAY GENERALLY**

Sec. 52. City traffic engineer to designate crosswalks, and to establish safety zones and school crosswalks.

The city traffic engineer is hereby authorized:

- (a) To designate and maintain, by appropriate devices, marks or lines upon the surface of the roadway, crosswalks at intersections where in his opinion there is particular danger to pedestrians crossing the roadway, and at such other places as he may deem necessary;
- (b) To establish safety zones of such kind and character and at such places as he may deem necessary for the protection of pedestrians.
- (c) To establish school crosswalks at places throughout the city where, in his opinion, they are necessary, because of traffic conditions, the proximity of schools to streets, or because of their use as a means of access to and from any school location and areas of population adjacent thereto. Such school crosswalks, and a distance of two hundred fifty (250) feet on either side thereof, shall constitute "School Zones" as defined herein, and shall be subject to such speed limits, or other traffic regulations applicable to "School Zones". For the purposes of properly designating any such school crosswalks and the distances adjacent thereto as provided for herein, the city traffic engineer shall cause appropriate signs, signals or other devices as may be required or necessary to be erected for the purpose of adequately

apprising traffic of the existance of such zones, and to safeguard the school children using the same.
(Ord. No. 2550, § 1, 9-23-70)

Sec. 53. Traffic lanes.

- (a) The city traffic engineer is hereby authorized to mark traffic lanes upon the roadway of any street or highway where a regular alignment of traffic is necessary.
- (b) Where such traffic lanes have been marked, it shall be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement. (Ord. No. 2550, § 1, 9-23-70)

Secs. 54—59. Reserved.

**CHAPTER VI. DRIVING ON RIGHT SIDE OF ROADWAY:
OVERTAKING AND PASSING: USE OF ROADWAY**

Sec. 60. Driving on right side of roadway; exceptions.

- (a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

APPENDIX I

**CRIMINAL SECTION III
NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA**

CITY OF BATON ROUGE

versus

NUMBER: 11-82-470

GEORGE D. HAYES

PETITION FOR REHEARING

NOW INTO COURT, through his undersigned counsel of record and pursuant to LSA-C.Cr.P. art. 922C, comes the defendant-appellant, GEORGE DEWEY HAYES (hereinafter may be simply referred to as "DEFENDANT"), and respectfully petitions the Court to set aside the opinion and judgment rendered herein on the 1 day of March, 1983 (a written copy of which having been received by unsigned counsel on Monday, March 21, 1983), and grant a rehearing of this appeal for the following reasons:

—1—

The errors complained of and submitted herein by the Defendant result in a miscarriage of justice, are prejudicial to the substantial rights of the Defendant and constitute substantial violations of constitutional and statutory rights accorded and guaranteed the Defendant.

- (a) DEFENDANT'S ASSIGNMENT OF ERRORS
3 AND 4 SHOULD HAVE BEEN CONSIDERED
AND ALLOWED BY THIS COURT AS
BEING AN APPROPRIATELY ASSIGNMENT
OF ERRORS BY VIRTUE OF BEING PA-**

TENT ON THE 'FACE OF THE RECORD' as the Courts have consistly held that:

The 'record' includes the caption, a statement of time and place of holding, indictment or information with the indorsement, arraignment, plea of accused, mention of impaneling of jury, verdict and judgment of court. *State v. Batemen* (1946) 209 La. 1036, 26 So. 2d 130; *State v. Houck*, (1942) 199 La. 478, 6 So. 2d 553.

No act is made a crime unless it is defined and made a crime clearly and unmistakably by statute. *State v. Whittlelock* (1939) 193 La. 1044, 192 So. 697, at page 192 So. 700[3].

- (b) DEFENDANT'S ASSIGNMENT OF ERRORS
3 AND 4 SHOULD HAVE BEEN ALLOWED BY THIS COURT BECAUSE THE RECORD IS TOTALLY DEVOID OF ANY FACTUAL EVIDENCE TO SUPPORT A FINDING OF PROOF OF ESSENTIAL ELEMENTS OF AN OFFENSE BEYOND A REASONABLE DOUBT, notwithstanding the unconstitutional vagueness of Baton Rouge City Code, Chapter VI, Title II, § 53(b). [May be referred to herein as: BRCC-6:2:53(b).]

It was reasonable conduct of the Defendant as a motorist operating a vehicle upon a practically traffic-free 'Interstate Highway' to merge into the flow of traffic in front of the lone oncoming-distance vehicle to his rear, upon giving warning; and, especially, when there are two totally traffic-free lanes to the left of the distance-oncoming vehicle to the Defendant's rear in which the driver of the distance-oncoming vehicle to the rear of the Defendant could have and should have veered, which would have been the practical prudent thing to do under the then existing conditions and circumstances. As the case stands—no accident was involved.

Driver of the distance-oncoming vehicle to the rear of the Defendant had a duty to "keep a proper lookout." *Young v. Sea Ins. Co.*, 173 So. 2d 363; *Funderburk v. Temple*, 268 So. 2d 689, writ refused 270 So. 2d, 875.

WHEREFORE, the premises considered, defendant-appellant, GEORGE DEWEY HAYES, prays that a 'rehearing' be granted herein; and that, in due course, the opinion/judgment of this Court of March 1, 1983 be set aside, voided, annulled and replaced with an opinion/judgment of this Court reversing the conviction/sentence of the defendant-appellant, GEORGE DEWEY HAYES, and ordering that he be discharged.

Respectfully submitted,

Attorneys for Defendant-Appellant:

JONES & JONES

/s/Johnnie A. Jones
JOHNNIE A. JONES
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

DATED: March 22, 1983

APPENDIX J

IN THE
COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA

NUMBER:
83KW0479

CITY OF BATON ROUGE,

Plaintiff-Respondent

versus

GEORGE DEWEY HAYES,

Defendant-Petitioner

PETITION FOR WRIT OF CERTIORARI
ON BEHALF OF
DEFENDANT-PETITIONER, GEORGE DEWEY HAYES

APPLICATION FOR WRIT OF CERTIORARI TO THE CITY
COURT OF BATON ROUGE (Criminal Section-Division 'B')
PARISH OF EAST BATON ROUGE, STATE OF LOUISI-
ANA. THE HONORABLE FREDDIE PITCHER, JR., JUDGE,
recently elected to preside over that division of Court

Attorneys for Defendant-Petitioner:

JONES & JONES

JOHNNIE A. JONES, Trial Attorney
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

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d) 'Brief' of the Petitioner, on appeal in the Nineteenth Judicial District Court (Criminal Section III), filed December 3, 1982	Omitted
e) 'Notice of Appeal Decision,' dated March 18, 1983	Omitted
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**IN THE
COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA**

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

1

JURISDICTIONAL STATEMENT

The defendant-petitioner, GEORGE DEWEY HAYES (hereinafter simply be referred to as 'PETITIONER'), on September 22, 1982, was truly and erroneously sentenced/convicted to pay a fine of \$15.00 or one (1) day in Jail and Court Costs of \$20.00 or one (1) day in Jail under the provisions of Baton Rouge City Code, Chapter VI, Title 11, § 53(b) [hereinafter may be cited as BRCC-11:53(b)], by the City Court of the City of Baton Rouge (Division 'B'), the Honorable L. J. Hymel, Judge presiding.

Petitioner timely appealed the sentence/conviction to the Nineteenth Judicial District Court (Criminal Section III), the Honorable Doug Moreau, the dispositive Judge thereof in such matter as this therein on appeal. **AFFIRMED.**

The 'supervisory jurisdiction' of this Court is invoked

pursuant to LSA-Const. Art. V, § 10(A)(3); and LSA-C.Cr.P. art. 912.1C.

II.

STATEMENT OF THE CASE

In a 'Uniform Traffic Ticket And Complaint Affidavit,' the City of Baton Rouge charges that the petitioner, GEORGE DEWEY HAYES, did on August 23, 1982, unlawfully operate an automobile upon I-10 West, an International Expressway over College Drive of the City of Baton Rouge, Louisiana, in violation of BRCC-11:53(b), which provides:

Sec. 53. TRAFFIC LANES.

Where such traffic lanes have been marked, it shall be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement, (Ord. No. 2550, § 1, 9-23-70).

The act of conduct of the petitioner, GEORGE DEWEY HAYES, and of which he is sentenced/convicted, being that, as an operator of an automobile, he entered onto a practically traffic-free Interstate Expressway (I-10 West) in front of a lone oncoming vehicle at approximately 10:55 P.M. on the night of August 23, 1982; notwithstanding that there was some pittance of evidence that there was another oncoming vehicle sighted in the distance rear of the said lone oncoming vehicle of which the Petitioner is charged with having made his entrance upon the Interstate Expressway in front of, and in violation of BRCC-11:53(b).

The act of conduct of the petitioner, GEORGE DEWEY HAYES, and for which he is sentenced/convicted, is not with

in the intendment of BRCC-53(b), except that BRCC-11:53(b) be constitutionally inadequate in application for vagueness and/or ambiguity.

III.

SPECIFICATION OF ERRORS

1. The Court erred insofar as it failed or refused to take judicial cognizance that the 'Affidavit,' on which the Petitioner is charged, prosecuted and sentenced/convicted for the alleged offense of 'Improper Lane Usage,' fails to allege an offense or a violation within the intendment of BRCC-11:53(b), except to deprive and deny to the Petitioner due process of law and the equal protection of the laws accorded and guaranteed to him by the Fourteenth Amendment of the Constitution of the United States, and the Constitution of the State of Louisiana of 1974, Article I, §§ 2 and 3.
2. The Court erred in that it failed or refused to grant the Petitioner's timely 'Motion for a Direct Verdict' or 'motion for a judgment of dismissal.' [Cf. Tr. p. 31.]
3. The Court erred in failing to hold and maintain that the law and the evidence are insufficient to sustain the 'judgment of guilty of improper lane usage' under the provisions of BRCC-11:53(b), except to abridge and violate the rights of due process of law and the equal protection of the laws constitutionally accorded and guaranteed the petitioner, GEORGE DEWEY HAYES, who committed no traffic violation at all with in the intendment of BRCC-11:53(b); and, therefore, the finding on the record by the Nineteenth Judicial District Court (Criminal Section III) is, also, or likewise, error.
4. The Trial Court and the Nineteenth Judicial District Court (Criminal Section III), Parish of East Baton Rouge,

State of Louisiana, in its capacity as the Appeal Court in this action, erred by not taking into consideration that the errors complained of by the Petitioner or patent on the face of the record; and that the offense of which the Petitioner is charged, prosecuted and sentenced/convicted is not in any-wise expressly set forth or defined in BRCC-11:53(b); and, therefore, can not be constitutionally sustain for want of statutory specificity patent on the face of the record.

IV.

ISSUES AND QUESTIONS OF LAW PRESENTED

Whether the intendment of BRCC-11:53(b) proscribes the lane usage allegedly made by the Petitioner upon the 'Interstate Expressway' (I-10 West) under the facts and circumstances of this case as made and provided; and, if so, is BRCC-11:53(b) too unconstitutionally broad, or vague and ambiguous, to properly inform motorists that such operation, usage or conduct is 'lane straddling' or 'cut-in' within the proscriptive bounds of BRCC-11:53(b), subjecting such motorists to criminal punishment without fair and adequate statutory warning?

V.

APPENDICES

Pursuant to LSA-C.Cr.P. art. 912.1C and Rule 4-5(f)-(i) of the Uniform Rules of Louisiana Courts of Appeal, petitioner, GEORGE DEWEY HAYES, appends hereto, files herewith, and makes same a part hereof the same as if herein set forth at length legible copies of the following, to-wit:

- a) 'Uniform Traffic Ticket And Complaint Affidavit,' charging Petitioner with 'Improper Lane Usage' under BRCC-11:53(b) on the 23 day of August, 1982.

- b) 'Transcript of the Trial Proceedings,' complete, as heard on Wednesday, September 22, 1982.
- c) 'Specification of Errors and Designation of the Record,' filed with the Trial Court, the City Court of the City of Baton Rouge, on October 28, 1982.
- d) 'Brief,' of the Petitioner, on appeal in the Nineteenth Judicial District Court (Criminal Section III), filed December 3, 1982.
- e) 'Notice of Appeal Decision,' dated March 18, 1983.
- f) 'Judgment/Opinion of the Nineteenth Judicial District Court (Criminal Section III), the Appeal Court in this action, dated March 1, 1983.
- g) 'Petition for Rehearing,' on appeal by Petitioner, filed in the Nineteenth Judicial District Court (Criminal Section III), on March 22, 1983.
- h) 'Judgment,' decision of the Nineteenth Judicial District Court (Criminal Section III) by which the Rehearing was DENIED, dated April 5, 1983.
- i) 'Minutes,' of the Trial Court, the City Court of the City of Baton Rouge, Louisiana.
- j) 'Notice of Intention/Motion for Stay of Execution and ORDER; filed with and signed by the said Trial Court on April 14, 1983, allowing Petitioner until April 28, 1983, to file this APPLICATION to this COURT.

Petitioner shows by "Attorney's Affidavit" that a copy of this 'Petition for Writ of Certiorari' has this day been served or is being served upon the Honorable Freddie Pitcher, Jr., Judge; and the Prosecutor of the City of Baton Rouge, Louisiana.

VI.

PRAYER

WHEREFORE, petitioner, GEORGE DEWEY HAYES, prays that a 'Writ of Certiorari' issue herein, directed to the City Court of the City of Baton Rouge (Division 'B'), commanding that in the case of the *City of Baton Rouge v. George Dewey Hayes*, T#77959, and all of the proceedings had therein be sent up to this Court, to the end that same may be examined; and that this Court may either remand the case with instructions or reverse and pronounce judgment therein.

Respectfully submitted,

Attorneys for Defendant-Petitioner:

JONES & JONES

/s/Johnnie A. Jones
JOHNNIE A JONES, Trial Attorney
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

DATED: April 28, 1983

VERIFICATION BY AFFIDAVIT OF ATTORNEY

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified, in and for the Parish of East Baton Rouge, State of Louisiana,

PERSONALLY CAME AND APPEARED:
_____JOHNNIE A. JONES_____,
who, upon Oath, did depose and say:

That he is the Trial Attorney of Record for the petitioner,

George Dewey Hayes, in the above and foregoing captioned action; that he prepared the above and foregoing 'Petition for Writ of Certiorari,' and is familiar with its contents; and that to the best of his remembrance, understanding, knowledge, information and belief all of the allegations of fact therein contained are true and correct.

Further, affiant deposed that a copy of the above and foregoing 'Petition for Writ of certiorari' has this day been or is being hand-delivered or forwarded by regular United States Mail, first-class postage prepaid, to:

Honorable Freddie Pitcher, Jr.
Judge of Division 'B'
City Court of Baton Rouge
1100 Laurel Street, Second Floor
Post Office Box 1471
Baton Rouge, Louisiana 70821-1471

Mr. Ralph Tyson, Esq.
City Prosecutor
City Courthouse Building, Room 208
Baton Rouge, Louisiana 70821-1471

Baton Rouge, Louisiana, this 28 day of April, 1983.

/s/Johnnie A. Jones
JOHNNIE A. JONES

SWORN TO AND SUBSCRIBED, before me, this 28 day of April, 1983.

/s/Leo D'Aubin
NOTARY PUBLIC

1-K

APPENDIX K

IN THE
SUPREME COURT OF LOUISIANA
NUMBER: 83-KK-1184

CLERK

CITY OF BATON ROUGE,

Plaintiff-Respondent

versus

GEORGE DEWEY HAYES,

Defendant-Relator

PETITION FOR WRIT OF CERTIORARI OR REVIEW
ON BEHALF OF
GEORGE DEWEY HAYES

APPLICATION FOR WRIT OF CERTIORARI OR REVIEW
TO THE CITY COURT OF THE CITY OF BATON ROUGE
(DIVISION (B')), PARISH OF EAST BATON ROUGE,
STATE OF LOUISIANA, THE HONORABLE FREDDIE
PITCHER, JR., the recently elected Judge to replace the
Honorable L. J. Hymel, who presided over the trial on Sep-
tember 22, 1982, JUDGE PRESIDING

Attorneys for Defendant-Relator:

JONES & JONES

/s/Johnnie A. Jones
JOHNNIE A. JONES, Trial Attorney
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/388-8573

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OTHERS:

None.

IN THE
SUPREME COURT OF LOUISIANA

CITY OF BATON ROUGE, Plaintiff-Respondent
versus NUMBER: 83-KK-1184
GEORGE DEWEY HAYES, Defendant-Relator

PETITION FOR WRIT OF CERTIORARI OR REVIEW
MAY IT PLEASE THE COURT:

I.

STATEMENT OF THE CASE

In a 'Uniform Traffic Ticket And Complaint Affidavit,' the City of Baton Rouge charges that GEORGE DEWEY HAYES (hereinafter may be simply referred to as 'RELATOR') did on August 23, 1982, unlawfully operate an automobile upon I-10 West, an International Expressway over College Drive of the City of Baton Rouge, Louisiana, in violation of Baton Rouge City Code, Chapter VI, Title 11, § 53(b), herein after may be cited as 'BRCC-11:53(b),' which provides:

Sec. 53. TRAFFIC LANES.

Where such traffic lanes have been marked, it shall be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement, (Ord. No. 2550, § 1, (9-23-70)

On September 22, 1982, the relator, GEORGE DEWEY HAYES, was tried by the City Court of the City of Baton Rouge (Division 'B'), the Honorable L. J. Hymel, Judge pre-

siding, and was erroneously found GUILTY AS CHARGED and convicted/sentenced to pay a fine of \$15.00 or one (1) day in Jail and Court Costs of \$20.00 or one (1) day in Jail under the provisions of BRCC-11:53(b).

Relator timely appealed the conviction/sentence to the Nineteenth Judicial District Court (Criminal Section III), Parish of East Baton Rouge, State of Louisiana, the Honorable Doug Moreau, the dispositive Judge thereof in such matter as this therein on appeal, AFFIRMED.

Relator timely petitioned the Court of Appeal, First Circuit, for a 'Writ of Certiorari,' which the Court DENIED.

On May 9, 1983, relator, GEORGE DEWEY HAYES, timely served 'Notice of Intention/Motion for Stay of Execution and Order,' suggesting to the City Court of the City of Baton Rouge, Louisiana, that the conviction/sentence therein pending against the relator, GEORGE DEWEY HAYES, be stayed while this application for 'Writ of Certiorari or Review' is pending herein and under consideration by this Court. The said Trial Court granted the relief sought; provided, however, that this application is made hereto on or before Tuesday, the 31 day of May, 1983.

II.

JURISDICTIONAL STATEMENT

The 'Supervisory Jurisdiction' of this Court is hereby invoked pursuant to LSA-Const. Art. V. § 5(A) and C; Rule X, § 5, of the Local Rules of this Court.

III.

ISSUES AND QUESTIONS OF LAW INVOLVED

Whether the intendment of BRCC-11:53(b) proscribes the lane usage allegedly made by the relator, GEORGE

DEWEY HAYES, as a motorist lawfully operating a automobile upon the 'Interstate Expressway (I-10 West) under the facts and circumstances of this case, as made and provided on the face the record via of the 'Charging Affidavit'; and, if so, is BRCC-11:53(b) too unconstitutionally broad, or vague and ambiguous, to properly inform motorists that such operation, usage or conduct is 'lane straddling' or 'cut-in' within the proscriptive bounds of BRCC-11:53(b), subjecting motorists, merging unto a continuing traffic lane from an entrance lane unto the Expressway, to criminal punishment without fair and adequate statutory warning?

IV.

ASSIGNMENT OF ERRORS

1. The Court erred insofar as it failed or refused to take judicial cognizance that the 'Affidavit,' under which the Relator is charged, prosecuted and convicted/sentenced for the alleged offense 'Improper Lane Usage,' fails to allege an act of conduct made an offense of violation under the provisions of BRCC-11:53(b), except that BRCC-11:53(b) be construed unconstitutionally broad to render it vague and ambiguous in such a manner so as to deprive and deny to Relator due process of law and the equal protection of the laws accorded and guaranteed to him by the Fourteenth Amendment of the Constitution of the United States, and the Constitution of the State of Louisiana of 1974, Article I, §§ 2 and 3.
2. The Court erred in that it failed or refused to grant the Relator's timely 'Motion for a Directed Verdict' or 'Judgment of Acquittal.' [Cf. Tr. p. 31; page 60 of this application.]
3. The Trial Court, and the Nineteenth Judicial District Court, as well, in its capacity as the Appeal Court in this action, erred in their failure to take judicial cognizance that

the errors complained of by the Relator in the Courts a quo, and from which relief is sought herein, are patent on the face of the record; and that the act of conduct of which the Relator is charged, prosecuted and convicted/sentenced is in nowise defined and made an act of violation under the provisions of BRCC-11:53(b); and, therefore, cannot be constitutionally sustained for want of statutory specificity patent on the face of the record.

V.

REASONS WHY THE WRIT SHOULD BE GRANTED

The act of conduct of the relator, GEORGE DEWEY HAYES, and of which he is convicted/sentenced, being that, as an operator of an automobile, he entered onto a practically traffic-free Interstate Expressway (I-10 West) from an 'entrance lane' in front of a lone oncoming vehicle at approximately 10:55 P.M. on the night of August 23, 1,983; notwithstanding, that there was some pittance of evidence that there was another oncoming vehicle which lights were sighted in the far-distance rear of the said lone oncoming vehicle in front of which Relator made his mergence-entrance upon the Expressway at the minimum-posted speed limit. This act of conduct is not defined and made a violation under BRCC-11:53(b).

The act of conduct of the relator, GEORGE DEWEY HAYES, and of which he is charged, prosecuted and convicted/sentenced is in nowise a traffic violation of 'Improper Lane Usage' within the intendment of BRCC-11:53(b), except that BRCC-11:53(b) be construed in a manner to be constitutionally impermissible in application for vagueness and/or ambiguity; or for lack of the necessary statutory prerequisites to adequately serve due process warning upon motorists making lawful use of the Expressway.

Unless an act can be brought within the meaning of the words of a criminal statute, it is not a crime, though it comes within the mischief sought to be remedied, and is of equal atrocity with the acts enumerated and denounced by the statute. *State v. Fontenot* (1904) 112 La. 628, 36 So. 630; *State v. Brinson* (1921) 149 La. 320, 89 So. 18.

It is well-settled in Louisiana, that "no act is made a crime unless it is defined and made a crime clearly and unmistakably by statute." *State v. Whittock* (1939) 193 La. 1044, 192 So. 697; *State v. Maitrejean* (1939) 193 La. 824, 192 So. 361; *State v. Williams* (1931) 173 La. 1, 136 So. 68.

This Court, in discouragement of criminal convictions based wholly on procedural technicalities, has held that some errors, such as a fatally defective indictment or 'Charging Affidavit' can be urged for the first time on appeal as 'errors patent on the fact of the record.'

Failure of defense counsel to assail defective bill of information did not preclude appellate review. LSA-C.Cr.P. 920.

Supreme Court may notice an appeal ex proprio motu errors patent on face of record, such as fatally defective pleadings, even though no objection thereto has been raised below or by assignment of error in Supreme Court. LSA-C.Cr.P. art. 920. *State v. Raby* (1971) 259 La. 909, 253 So.2d 370[6, 7].

Bill of Information is foundation of prosecution; thus, if it is fatally defective a conviction obtained thereunder cannot stand, and such error is one patent on face of record which should be noted by reviewing court ex proprio motu. LSA-C.Cr.P. art. 920(2). *State v. Butler* (1971) 259 La. 560, 250 So. 2d 740[1].

Suffice it to say, that this is not a 'civil case' and no

accident is involved; but, nevertheless, the driver of the on-coming vehicle to the distance rear of Relator in the adjacent traffic lane had a duty to keep a 'proper lookout' for preceding merging-traffic from the 'entrance-lanes' unto the Expressway and to veer so as to accommodate the entrance when, as in this case, such accommodation can be favorably made without placing in peril other motorists making lawful use of the Expressway.

It is to be remembered, that at all time material to this case the Relator was driving the most forward vehicle. The other two vehicles said to be in any proximity of Relator were in the distance rear of the vehicle being operated by Relator; and, therefore, the drivers of the others two vehicle had a duty "not to follow too closely, to keep a distance and to drive at a speed to be able to stop within vision, and to keep a proper lookout." Cf. *Young v. Sea Ins. Co.* (LACA/1st Cir. 1965) 173 So. 2d 362; *Funderburk v. Temple* (LACA/1st Cir. 1972) 268 So. 2d 689, writ refused 270 So. 2d 875.

VI.

APPENDICES

Pursuant to Rule X, § 5, of Louisiana Supreme Court Rules, relator, GEORGE DEWEY HAYES, appends hereto, files herewith, and makes a part hereof as if herein set forth at length legible copies of the following, to-wit:

- a) Opinion of the Court of Appeal First Circuit, dated May 5, 1983 1-D
- b) Petition for Writ of Certiorari, filed with the Court of Appeal, First Circuit, April 28, 1983 1-J
- c) Judgment/Opinion of the Nineteenth Judicial District Court (Criminal Section III), the Appeal Court in this action, dated March 1, 1983 1-B

- d) Notice of Appeal Decision, dated March 18, 1983 Omitted
- e) Petition for Rehearing, on appeal by Relator in the Nineteenth Judicial District Court (Criminal Section III), filed March 22, 1983 1-I
- f) Judgment on Rehearing, by the Nineteenth Judicial District Court (Criminal Section III), by which Relator's Application for Rehearing was DENIED, dated April 5, 1983 1-C
- g) Uniform Traffic Ticket And Complaint Affidavit, und., which Relator is charged with 'Improper La. /usage' under BRCC-11:53(b) 1-H
- h) Specification of Errors and Designation of the Record, filed with the Trial Court, the City Court of the City of Baton Rouge, on October 28, 1982 1-L, 2-L
- i) Transcript of the Trial Proceedings, complete, as heard on Wednesday, September 22, 1982 1-A
- ***ii) Minutes of the Trial Court 1-F, 2-F
- j) Brief of Relator on appeal in the Nineteenth Judicial District Court (Criminal Section III), filed and submitted December 3, 1982 Omitted
- k) Notice of Intention/Motion for Stay of Execution and ORDER of the Judge of the Trial Court, fixing the time for filing this APPLICATION IN THIS COURT until Tuesday, May 31, 1983 Omitted
- l) VERIFICATION, with 'Certificate of Service,' pursuant to Rule X. § 5(a), this Court 13-K, 14-K

VII.

**AVERMENT OF OBJECTIONS
IN LOWER COURT(S) PROCEEDINGS**

Pursuant to Rule X. § 5(a)10., of Louisiana Supreme

Court Rules, relator, GEORGE DEWEY HAYES, avers that, on his behalf, objections were seasonably made in the proceedings of the lower courts of the errors herein assigned, or that the errors herein assigned are patent on the face of the record for reasons the 'Charging Affidavit' being fatally defective to sustain the conviction/sentence of the Relator; or that the errors are patent on the face of the record for want of due process statutory notice of the violation of 'Improper Lane Usage' under the provisions of BRCC-11:53(b).

VIII.

PRAYER

WHEREFORE, relator, GEORGE DEWEY HAYES, prays that a 'Writ of Certiorari or Review' issue herein, directed to the City Court of the City of Baton Rouge, Louisiana (Division 'B'), commanding that the record in the case of the *City of Baton Rouge v. George Dewey Hayes*, T # 77959, and all the proceedings therein had be sent up to this Court, the Supreme Court of the State of Louisiana, to the end that same may be examined; and that this Court may either remand the case with instructions or reverse and pronounce judgment therein.

Respectfully submitted,

Attorneys for Defendant-Relator:

JONES & JONES

/s/Johnnie A. Jones
JOHNNIE A. JONES, Trial Attorney
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

May 31, 1983.

VERIFICATION BY AFFIDAVIT OF ATTORNEY

**STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE**

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified, in and for the Parish of East Baton Rouge, State of Louisiana,

PERSONALLY CAME AND APPEARED:

_____**JOHNNIE A. JONES**_____,
who, upon Oath, did depose and say:

That he is the 'Trial Attorney of Record' for the relator, George Dewey Hayes, in the above and foregoing 'Petition for Writ of Certiorari or Review'; that he prepared same and is familiar with its contents; and that the allegations of fact therein contained are true and correct to the best of his remembrance, understanding, knowledge, information and belief.

Further, affiant deposed that by hand-delivery, or regular United States Mail, first-class postage prepaid, a copy of the above and foregoing said petition is this day being served upon:

1. Honorable Freddie Pitcher, Jr.
Judge of Division 'B'
City Court of Baton Rouge
1100 Laurel Street
Post Office Box 1471
Baton Rouge, Louisiana 70821-1471
Telephone: 504/389-3025

14-K

2. Mr. Ralph Tyson, Esq.
City Prosecutor
City Courthouse Building, Room 208
1100 Laurel Street
Post Office Box 1471
Baton Rouge, Louisiana 70821-1471

Baton Rouge, Louisiana, this 31 day of May, 1983.

/s/Johnnie A. Jones
JOHNNIE A. JONES

/s/Richard E. Burton
NOTARY PUBLIC

APPENDIX L

DIVISION "B"

CITY COURT OF THE CITY OF BATON ROUGE
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CITY OF BATON ROUGE, LOUISIANA

versus

NUMBER: T#77959

GEORGE DEWEY HAYES

ASSIGNMENT OF ERRORS

and

DESIGNATION OF THE RECORD

NOW INTO COURT, through his undersigned counsel of record, and pursuant to Articles 844 and 845 of the Louisiana Code of Criminal procedure, comes GEORGE DEWEY HAYES, made defendant in the above-captioned cause, and, as hereinafter respectively set forth, assigns the errors of the Court and designates the record on appeal as follows, to-wit:

Part—I.

1. The Court erred insofar as it failed or refused to take judicial cognizance that the "Affidavit," charging the Defendant with the crime of "Improper Lane Usage" for which the Defendant is prosecuted and convicted, fails to charge a crime within the ambit of Baton Rouge City Code, Chapter VI, Title 11, § 53(b) [hereinafter may be cited as "BRCC-11:53(b)"], except to deprive and deny to the Defendant his rights to due process of the law and the equal protection of the laws accorded and guaranteed to him by the Fourteenth Amendment of the Constitution of the United States, and the Constitution of the State of Louisiana of 1974, Article I, §§ 2 and 3.

2-L

2. The Court erred inasmuch as it failed or refused to take into consideration and hold and maintain that for want of statutory specificity BRCC-11:53(b) is insufficient to find and sustain a "judgment of guilty of improper lane usage," except to violate the Defendant's due process right—to be adequately informed by statute—constitutionally accorded and guaranteed to him.

3. The Court erred in that it failed or refused to grant the Defendant's timely "Motion For A Directed Verdict" or motion for judgment of dismissal. [Cf. Tr. p. 31.]

4. The Court erred in failing to hold and maintain that the law and evidence are insufficient to sustain the "judgment of guilty of improper lane usage" under BRCC-11:53(b), except to abridge and violate the rights to due process of the law and the equal protection of the laws constitutionally accorded and guaranteed the defendant, GEORGE DEWEY HAYES.

Part—II.

Pursuant to Article 845 of Louisiana Code of Criminal Procedure, the defendant, GEORGE DEWEY HAYES, desires and designates that the entire record be included on appeal; that the transcript be made a part of the record and, as such, be included in the entire record hereby designated by the defendant, GEORGE DEWEY HAYES, to be included on appeal.

Respectfully submitted,
Attorneys for Defendant:
JONES & JONES
/s/Johnnie A. Jones
JOHNNIE A. JONES
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

Dated: October 28, 1982

CERTIFICATE OF SERVICE

Undersigned counsel of record for the defendant,
GEORGE D. HAYES, does hereby certify that a copy of
the above and foregoing "Assignment of Errors" combined
with the "Designation Of The Record" has this day been
hand-delivered to the office of the:

City Prosecutor
City Courthouse Building, Room 208
1100 Laure Street
Post Office Box 1471
Baton Rouge, Louisiana 70801

Baton Rouge, Louisiana, this 28 day of October, 1982.

/s/Johnnie A. Jones
JOHNNIE A. JONES

APPENDIX M

DIVISION 'B'

CITY COURT OF THE CITY OF BATON ROUGE
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CITY OF BATON ROUGE

versus

NUMBER: T # 77959

GEORGE DEWEY HAYES

NOTICE OF INTENTION TO APPLY FOR A
REVIEW ON WRIT OF CERTIORARI BY THE
SUPREME COURT OF THE UNITED STATES—
and MOTION FOR STAY OF EXECUTION DURING
PENDENCY OF THE APPLICATION IN THAT
COURT

TO THE HONORABLES, THE JUDGES OF THE CITY
COURT OF THE CITY OF BATON ROUGE, PARISH OF
EAST BATON ROUGE, STATE OF LOUISIANA:

NOW INTO COURT, through his undersigned counsel of record, and pursuant to 28 U.S.C. § 2101(d) and Rule 20.1 of the Rules of the Supreme Court of the United States, comes the defendant, GEORGE DEWEY HAYES, and informs the Court that on June 27, 1983, his application for 'Writ of Certiorari, or Review' was denied by the Supreme Court of the State of Louisiana; that within sixty (60) days from that date, or on or before Friday, August 26, 1983, the defendant, GEORGE DEWEY HAYES, intends to file, in this case, a 'Petition for Certiorari' in the Supreme Court of the United States, suggesting a review by that Court of the issues and errors of law of which he complained of and presented to this Court and the appellate [C]ourts of the State of Louisiana; and of which a final determination was made by the Supreme

2-M

Court of Louisiana on June 27, 1983, and notice of which was received by undersigned counsel of record for the Defendant on Wednesday, June 29, 1983.

WHEREFORE, defendant, GEORGE DEWEY HAYES, moves for a 'Stay of Execution of the Conviction/Sentence against him pending in the above-captioned matter during the pendency of his 'Petition for Writ of Certiorari' in the Supreme Court of the United States.'

Respectfully submitted,

Attorneys for Defendant:

JONES & JONES

/s/Johnnie A. Jones
JOHNNIE A. JONES, Trial Attorney
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

DATED: July 5, 1983

CERTIFICATE OF SERVICE

A copy hereof and of the companioned suggestive order have this day been hand-delivered and left at the office of the Trial Judge in this case; and, likewise, with the office of the City Prosecutor.

Baton Rouge, Louisiana, this 5 day of July, 1983.

/s/Johnnie A. Jones
JOHNNIE A. JONES

DIVISION 'B'
CITY COURT OF THE CITY OF BATON ROUGE
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CITY OF BATON ROUGE

versus

NUMBER: T # 77959

GEORGE DEWEY HAYES

ORDER

The accompanying jointly combined 'Notice' and 'Motion' considered;

IT IS ORDERED that the 'Notice of Intention to Apply for a Review on Writ of Certiorari by the Supreme Court of the United States—and Motion for Stay of Execution During Pendency of the Application in the Supreme Court of the United States' be, and the defendant, GEORGE DEWEY HAYES, is allowed sixty (60) days from June 27, 1983, or until Friday, August 26, 1983, to apply and file the Application or 'Petition for Certiorari' with the Supreme Court of the United States, all in accordance with 28 U.S.C. § 2101(d) and Rule 20.1 of the Supreme Court of the United States.

IT IS FURTHER ORDERED that the Judgment of Conviction/sentence rendered against the defendant, GEORGE DEWEY HAYES, in the above-captioned matter, and by this Court, be stayed accordingly; and henceforth during the pendency of the 'Petition for Certiorari' with the Supreme Court of the United States; and until a subsequent 'Notice to Appear' is duly issued and served upon the Defendant and his undersigned counsel of record as will and shall be further ordered by this Court.

Baton Rouge, Louisiana, this 6th day of July, 1983.

/s/Darrel D. White
JUDGE